

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 30, 2003

IN RE:

JOINT PETITION OF SPECIAL  
DEPUTY RECEIVERS

of

CASE NO. INS-2003-00092

DOCTORS INSURANCE RECIPROCAL,  
RRG, In Receivership,

AMERICAN NATIONAL LAWYERS  
INSURANCE RECIPROCAL,  
RRG, In Receivership,

and

THE RECIPROCAL ALLIANCE,  
RRG, In Receivership,

Joint Petitioners.

SCHEDULING ORDER AND TEMPORARY INJUNCTION

On April 25, 2003, the Special Deputy Receivers ("SDR") for Doctors Insurance Reciprocal, Risk Retention Group ("DIR"), American National Lawyers Insurance Reciprocal, Risk Retention Group ("ANLIR"), and The Reciprocal Alliance, Risk Retention Group ("TRA") (collectively, the "Companies"), by counsel, filed a Joint Petition for Expedited Review of Claims and Deputy Receiver's Determination of Appeal and Brief in Support of Joint Petition ("Joint Petition"). The Companies seek, *inter alia*, a temporary injunction from the Commission ordering the Deputy Receiver of Reciprocal of America ("ROA") and The Reciprocal Group ("TRG") to cease the further dissipation of any assets under the control of ROA/TRG so that (i) the SDRs and the ROA/TRG Deputy Receiver, collectively, can have the opportunity, in a cooperative effort, to determine where and what the assets are and for whose benefit they are

being held, and so that (ii) this matter can be addressed on the merits.<sup>1</sup> The SDRs also assert that "[t]he current treatment of [the Companies'] claimants as mere 'creditors' with lower priority than ROA/TRG's direct insureds, and the corresponding refusal to consider claims against the [Companies] and their insureds for payment unless and until the ROA/TRG Deputy Receiver believes there are sufficient funds to do so, is causing significant hardship to the [Companies'] insureds. It is a very significant hardship—and a very high risk—for health professionals, lawyers, and other professional insureds to be exposed to the possibility that the professional liability insurance they had been promised does not exist."<sup>2</sup>

The Commission has the power to issue temporary and permanent injunctions.<sup>3</sup> Section 8.01-628 of the Code of Virginia provides that "[n]o temporary injunction shall be awarded unless the court shall be satisfied of the plaintiff's equity." We express no opinion on the merits, or lack thereof, of any aspect of the Joint Petition in this Order.<sup>4</sup> Specifically, we do not make any determination as to the SDRs' likelihood of success on the merits. We find it sufficient to grant a temporary injunction due to the asserted danger and need for protection for the policyholders, subscribers, and third-party claimants of the Companies.<sup>5</sup> We find that a temporary injunction is warranted until such time as the Deputy Receiver may provide us

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<sup>1</sup> Joint Petition at 6, 44.

<sup>2</sup> Brief in Support of Joint Petition at 39. The SDRs assert that DIR insures more than 2,000 subscribers in Virginia, some of which are individual physicians and some of which are multi-physician practices. Joint Petition at 10. The SDRs assert that ANLIR insures more than 5,000 Virginia lawyers. Joint Petition at 11. The SDRs claim that TRA insures health care facilities, associations and other healthcare professionals, including counselors, "many of which or whom are located in Virginia." Joint Petition at 11.

<sup>3</sup> §§ 12.1-13 and 38.2-1507 of the Code of Virginia.

<sup>4</sup> See, Capital Tool and Mfg. Co., Inc. v. Maschinenfabrik Herkules, 837 F.2d 171 (4<sup>th</sup> Cir. 1988) (finding that there is no great difference between federal and Virginia standards for preliminary injunctions). The Court in Capital Tool noted that the principles in Blackwelder Furniture Co. v. Selig Mfg. Co., 550 F.2d 189 (4<sup>th</sup> Cir. 1977) were applicable. The four factors typically employed to determine the necessity of issuing a temporary injunction are: (i) Has the petitioner made a strong showing that it is likely to prevail upon the merits? (ii) Has the petitioner shown that without such relief it will suffer irreparable injury? (iii) Would the issuance of the injunction substantially harm other interested parties? and (iv) Wherein lies the public interest? Blackwelder, 550 F.2d at 193.

<sup>5</sup> Blackwelder, 550 F.2d at 193.

information as to the hardship to the policyholders, subscribers, and third-party claimants of ROA/TRG caused by the issuance of such an injunction.<sup>6</sup> Such information will enable us to properly balance the hardships to both litigants.

Accordingly, IT IS ORDERED THAT:

(1) The Deputy Receiver of ROA/TRG is hereby ENJOINED from making any further payments to ROA policyholders, subscribers, or third-party claimants, with the exception of claims arising under ROA workers' compensation insurance policies and medical and recurring partial or total disability payments made thereunder, until further order of the Commission;

(2) The Deputy Receiver of ROA/TRG may continue to pay administrative expenses and secured claims of ROA/TRG;

(3) The Deputy Receiver shall respond to the Joint Petition by providing specific information as to the hardship to the policyholders, subscribers, and third-party claimants of ROA caused by the issuance of this temporary injunction, and such other information and arguments as the Deputy Receiver may desire, by May 7, 2003;

(4) The Deputy Receiver shall respond, in accordance with 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure, to all other issues raised by the Joint Petition by May 16, 2003; and

(5) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: H. Lane Kneedler, Esquire, ReedSmith LLP, Riverfront Plaza, West Tower, 901 East Byrd Street,

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<sup>6</sup> The Deputy Receiver of ROA and TRG filed on April 30, 2003, an Application for Orders Setting Hearing on Liquidation of Reciprocal of America and The Reciprocal Group, Establishing Response Dates, Ordering Liquidation, Approving Claims Bar Dates, and Related Matters ("Application for Liquidation"). Therein, the Deputy Receiver asserts, *inter alia*, that ROA issued a substantial number of workers' compensation insurance policies and that ROA is currently making a number of medical and recurring partial or total disability payments to individuals entitled thereto under the workers' compensation insurance policies. The Deputy Receiver avers that such payments, net of recoveries, average approximately \$3,000,000 each month. Such payments, however, are alleged to be generally essential to the daily sustenance of the recipients in this Commonwealth and in other states. Application for Liquidation at 3.

Suite 1700, Richmond, Virginia 23219-4069, counsel to the Special Deputy Receivers for the Companies; Melvin J. Dillon, Special Deputy Receiver, c/o Reciprocal of America and The Reciprocal Group, In Receivership, 4200 Innslake Drive, Glen Allen, Virginia 23060; and Commissioner of Insurance Alfred W. Gross, Deputy Receiver of the Reciprocal of America, In Receivership, and The Reciprocal Group, In Receivership, c/o The Bureau of Insurance; and Peter B. Smith, Esquire, Office of General Counsel, State Corporation Commission.